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SIPDIS

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SUBJECT: GUATEMALA LABOR/TIP UPDATE #3-2004

1. (SBU) The following is an update of significant recent developments in the labor sector and trafficking in persons (TIP). Topics include:

- Labor: 100 Days in Labor (paras 1-2)
- Labor: Apparel Sector Plans Mediation Center (3)
- Labor: Uncertainty at NB Maquila (4)
- Labor: Prosecutions and Personnel Changes (5)
- Labor: Finca Maria Lourdes Arrests (6)
- Labor: Reforms Stalled (7)
- TIP: DHS Trains 376 Officials (8)
- TIP: New Enforcement Efforts (9)
- TIP: Solicitor General to Combat TIP (10)
- TIP: Legislation Update (11-12)
- TIP: AID Proposes Prevention and Victims Assistance (13)

Labor: 100 Days

1. (SBU) An internal report (really a matrix with indicators) on the accomplishment of Berger Administration 100-day goals shared by the Labor Ministry with the Embassy includes mention of the pending labor code reforms, and takes credit for completion of rules implementing the Law of Integrated Protection of Children and Adolescents, conducting workshops on the law with Labor Ministry employees, strengthening of the special child labor inspection unit, monitoring of ILO-supported child labor projects, and beginning to unify criteria to resolve labor problems in the maquila sector. In addition, the matrix includes other efforts such as restructuring the Inspectorate General to create a notification section, implementing effective mechanism to control corruption, and developing training and statistical systems, institutional and administrative reforms and job creation initiatives. In an event marking his government's first 100 days, President Berger also congratulated his Education Minister for providing 8-month contracts to 11,000 of 13,000 new teachers permanently hired by outgoing President Portillo. Portillo's action had been struck down by the Constitutional Court for procedural illegalities and 2,000 of those named were found to lack basic qualifications.

2. (U) Unions used the traditional May Day march to burn President Berger in effigy, denounce the government's policies as pro-business, call for the release of labor leaders Rigoberto Duenas (jailed since June 2003 for alleged involvement in a corruption scheme at the Social Security Institute) and Victoriano Zacarias (jailed with other protesting trucker union members since February 25 for endangering the public) from preventive detention, and to reject CAFTA as anti-worker. President Portillo's final minimum wage increase was ruled unconstitutional by the Constitutional Court in January; a new round of minimum wage negotiations have begun. In February, President Berger named prominent labor union leader Jose Pinzon to the Commission to Implement the Peace Accords. The Commission provided input to another GOG commission designing a major fiscal reform package to help close a yawning budget deficit inherited from the previous government. Unions and other civil groups submitted their own proposals.

Labor: New Mediation Center Project

3. (U) On March 25, the Apparel Export Association (VESTEX) publicly unveiled a mediation/alternative dispute resolution project supported by AID through the Central American Economic Integration Secretariat (SIECA). VESTEX labor advisor Rolando Figueroa said the Center for Alternative Resolution of Labor Conflicts would be available to VESTEX's

260 member companies (224 apparel and 36 textile) and their 141,638 employees. Among its goals, the Center will seek to improve trust between employers and workers, resolve conflicts in their early stages, and improve the image of participating firms. After preparatory work and training of mediators, the Center will open in September 2004.

Labor: Maquila Workers Worried about Closure

14. (U) US-based labor rights NGO US/LEAP, the AFL-CIO Solidarity Center, and union leaders at the unionized and Korean-owned apparel export plant Nobland International expressed concern to LabAtt on April 28 about the rumored closing of the plant. Subsequent discussions with Labor Minister Gallardo, Labor Inspector General Celeste Ayala, the Korean Embassy, the GAP labor monitor and with VESTEX officials clarified that NB has named a new plant manager and reduced its production somewhat due to a decline in orders. VESTEX convoked a meeting among the new manager, factory union leaders, and the FISTRAS labor confederation for May 4, which LabAtt will attend as an observer. Until recently, NB management had been participating in good faith in weekly negotiating sessions of the company's first collective bargaining agreement with the union, hosted by a Ministry's labor inspector. According to the Korean Embassy, productivity at the NB plant here has been slipping and fewer contracts have been received from company agents in Korea. NB has another plant in Vietnam but is also sensitive to the concerns of U.S. buyers that the unionized factory here not be closed.

Labor: New Special Prosecutor, Progress

15. (U) Attorney General Florido recently named a new Special Prosecutor for Crimes Against Journalists and Trade Unionists, Mario Estuardo Castaneda. LabAtt will meet with the new Special Prosecutor on May 5. Prior to departing for a new assignment, the former Special Prosecutor, Antonio Cortez Sis, gave the following updates on cases of interest. Mario Roberto Ortiz Barranco, accused of the murder of trucking union leader Oswaldo Monzon Lima in June 2000, was released on bail (approx. \$6,250) in April. The Special Prosecutor has appealed the local court's bail decision and is awaiting an audience before the appeals court. Cortez Sis reported progress in the investigation, which should culminate in a request for the opening of a trial in June. Cortez Sis also reported progress on another murder case, of Baldomero de Jesus Ramirez in June 1999, which could lead to a request for an arrest warrant against the former mayor of Santa Lucia Cotzumalguapa, Escuintla.

Labor: Finca Maria Lourdes

16. (SBU) At the request of the Agrarian Platform, a coalition of campesino, land rights groups and NGOs, an inter-sectoral "Negotiation Table" was established to resolve several land/labor conflicts in Quetzaltenango, including the Finca Maria Lourdes case, on February 23, 2004. The Finca Maria Lourdes dispute stems from illegal firings of union members dating to 1995, and is featured in GSP petitions under current review. Since the firings the plantation has changed hands and is reportedly now owned by a relative of First Lady Wendy de Berger. Participants in the Mesa include representatives of the workers and owners of Finca Maria Lourdes, the UN (MINUGUA), the Human Rights Ombudsman's Office, CONTIERRA and FONTIERRA (the Government's land dispute resolution commission and land bank, respectively), Congressional deputy Alfredo de Leon and the provincial government of Quetzaltenango. On April 19, two Maria Lourdes worker representatives and Agrarian Platform members, Juan Jose Mota and Humberto Lopez, were reportedly detained by police under charges of "usurpation" stemming from their illegal occupation of plantation land. The Platform protested the detention and also called for suspension of outstanding arrest warrants against other Finca workers under similar charges; members of the Platform claims President Berger agreed not to enforce those warrants during negotiations. On April 21, Vice Minister of Labor Castillo told LabAtt that it appears that law enforcement authorities are not coordinating their actions well with the GOG institutions involved in the Mesa, and pledged to try to encourage that coordination. Mota and Lopez were released on bail on April 22.

Labor: Legislative Reforms

17. (U) Labor Code reforms pending before the last Congress were sent to the Congressional Labor Commission for review where they remain pending. The Commission has met with unions, business (CACIF), FRG Congressional deputies, members of the labor judiciary, and women's groups, among others. Vice Minister of Labor Castillo told LabAtt on April 22 that

he believes Congress will eventually pass the reforms without change, with the possible exceptions of sexual harassment and universal severance initiatives. Labor Minister Gallardo told LabAtt April 29 that he would submit the reforms for further discussion in the tripartite labor commission he chairs.

TIP: DHS Provides Anti-TIP Training

18. (U) During the week of March 22-26 DHS provided 10 half-day anti-TIP seminars to a total of 376 representatives from the National Civilian Police, Civil Aviation Directorate, Office of the Prosecutor for Crimes Against Women, Police Information Service, Solicitor General's Office, Foreign Ministry, Judicial Unit for Children and Adolescents, Immigration Directorate, and airport security. The seminar provided information distinguishing TIP from alien smuggling, on victim recognition, and how to combat TIP while protecting victims. MFA sources also tell us the GOG is developing its own training program for a special PNC task force to deal specifically with TIP cases.

TIP: Recent Enforcement Efforts

19. (U) With varying degrees of success, the GOG is starting to take actions against TIP and to work in coordinated law enforcement actions. Casa Alianza representatives have been attending anti-TIP raids at the invitation of authorities, to help identify and provide services to TIP victims.

-- Immigration, Public Ministry prosecutors and 150 PNC had conducted a coordinated operation targeting gang members near the Mexican border in Tecun Uman, and San Marcos province on March 5. A total of 31 illegal migrants (20 Honduran, 10 Salvadorans, and 1 Mexican) were arrested; 8 reportedly fit the profile of gang members, but no TIP victims were discovered.

-- On March 10, the Minors Section of the National Civilian Police's (PNC) Criminal Investigative Service (SIC) arrested Oscar Emerito Cabeza Garcia, a 24 year-old Salvadoran running the "Cocoloco International" club in Zone 19 of the capital, and rescued three Salvadoran minors being held for prostitution and 5 Salvadoran adult prostitutes. The adults were deported, and the minors were turned over to the courts.

-- On April 13 police arrested the manager of a Villa Nueva massage parlor and rescued three 16-year-old minors (one Guatemalan and two Hondurans) from that establishment. The 22-year-old manager was charged with migration violations and TIP.

-- Press reported on April 14 the return to Nicaragua of a 17-year-old Nicaraguan who had reportedly been prostituted and sequestered in a bar in Antigua. The girl's name was not reported (in an article reprinted here with a byline from AFP in Managua), and authorities claim no knowledge of the case.

-- Coordinated raids were conducted in Peten province on April 17, leading to deportations of adult sex workers but did not find victims of TIP.

TIP: Solicitor General to Combat TIP

110. (U) On April 18, the Solicitor General Ricardo Rosales announced a new agreement with Guatemala City Mayor Arzu to develop a plan to rescue street kids (and possible TIP victims) from exploitation by panhandling rings.

TIP: Legislation Update

111. (U) On May 5 the GOG published in the daily register Guatemala's Instrument of Adhesion to the Protocols of the UN Convention Against Transnational Organized Crime. The protocols, "Against the Smuggling of Migrants" and "To Prevent, Suppress and Punish Trafficking in Persons," were approved by Congress on August 19, 2003; the Instrument was signed by President Portillo on February 4, 2004 and deposited with the Secretary General of the UN on April 1, 2004. The Protocols entered into force on May 1, 2004.

112. (SBU) There are several different reforms proposed to the Guatemalan Penal Code to bring it into conformity with the TIP Protocol mentioned above. The ILO's proposal, which includes increased penalties for TIP and TIP-related crimes is awaiting approval by different ministries in the Security Cabinet before being signed by the President and sent to Congress. Meanwhile, other reform proposals on the same subject are already pending before Congress. The Congressional Legislative Secretariat will send competing proposals to the Family and Minors Committee, which may choose among them or integrate them before emitting an opinion.

TIP: AID Prevention and Victims Project

13. (U) AID has recently proposed a \$1.2 million 3-year project to prevent and protect victims of TIP in Guatemala. The purpose of the project would be to support the development of regional, national, and local networks to prevent trafficking in persons, and to protect and reintegrate trafficking victims. It would also seek to prevent victims from being re-trafficked, and facilitate the development and implementation of policies and laws related to trafficking in persons. This approach is designed to create a sustainable response to TIP by fortifying existing institutions and to step up the response to trafficking in persons in Central America and Mexico.
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